Supreme Court, U. S.
FILED
SEP 30 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 75-38

TOWNSHIP OF MOUNT LAUREL,

Appellant,

v.

SOUTHERN BURLINGTON COUNTY N.A.A.C.P., CAMDEN COUNTY C.O.R.E., CAMDEN COUNTY N.A.A.C.P., GLADYS CLARK, BETTY WEAL and ANGEL PEREZ,

and

ETHEL LAWRENCE, THOMASINE LAWRENCE, CATHERINE STILL, MARY E. SMITH, SHIRLEY MORRIS and JACQUELINE CURTIS,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

BRIEF OF TOWNSHIP OF HOLMDEL, COUNTY OF MONMOUTH, STATE OF NEW JERSEY AS AMICUS CURIAE IN SUPPORT OF JURISDICTIONAL STATEMENT

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PRELIMINARY STATEMENT

The Township of Holmdel, County of Monmouth, a political subdivision of the State of New Jersey, herein presents its brief as *amicus curiae*, in accordance with United States Supreme Court Rule 42(1) and (4), prior to the consideration by this Court of the jurisdictional statement, heretofore filed by the appellant.

INTEREST OF THE TOWNSHIP OF HOLMDEL

The Township of Holmdel, on behalf of its citizens, respectfully requests that this Court hear and consider the substantial issues raised in the within appeal.

The Township of Holmdel is an attractive and principally residential community, located in the County of Monmouth, State of New Jersey, and is typical of many

municipalities of this State. Once mainly a farming community, Holmdel, faced with the population spread of the last twenty years, has attempted, in good faith, to effect comprehensive planning processes and resultant zoning schemes to accommodate and regulate new growth and development patterns, while at the same time preserving the historic bucolic setting of the community. Presently, Holmdel has approximately 1,800 residential units and large areas devoted to agricultural pursuits.

Like many other municipalities in New Jersey, Holmdel has been subjected, in recent years, to protracted and expensive litigation over its zoning provisions. In the first action, *Bayliss, et al. v. Franklin Lakes, et al.*, (Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-33910-71 P.W.), a group of non-resident persons brought suit against Holmdel and four other municipalities claiming that certain zoning provisions were "exclusionary." In February of 1974, this action was dismissed, upon motion by the defendants, for failure to state a justiciable controversy.

In the second action, *Middle Union Associates v. Zoning Board of Adjustment of the Township of Holmdel, et al.*, (Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-1149-74 P.W.) a private developer had sought a variance to construct some 700 multifamily units which, by the applicant's own proofs, would be well without the financial reach of low or moderate income persons. After denial by the local zoning agency, the applicant instituted an action seeking review of the administrative determination *and* requesting declaratory judgment relief that the zoning ordinance of Holmdel was unconstitutionally "exclusionary" for failing to make express provision for low and moderate income

persons. Holmdel unsuccessfully challenged the standing of the applicant to raise such constitutional issues, on the ground that the applicant has no interest in such issues.

After trial on the merits, short on the heels of the *Mt. Laurel* decision of the New Jersey Supreme Court here on appeal, the court, constrained by the sweeping directives of *Mt. Laurel*, found the Holmdel zoning ordinance to be unconstitutional and further directed the municipality to amend its zoning ordinance "to provide for a reasonable area or areas where low and middle income housing can be built, including multi-family housing, in an amount of not less than 2100 units"—a consequence which would more than double both the number of residential units and the population of the community. This decision is now on appeal.

Thus, the Township of Holmdel has been most directly affected by the determination of the New Jersey Supreme Court here on appeal, and, therefore, urges that this Court review and consider the substantial constitutional questions raised in this cause.

STATEMENT OF THE CASE

The decision of the New Jersey Supreme Court in *Southern Burlington County NAACP, et al., v. Township of Mt. Laurel*, 67 N.J. 151, 336 A.2d 713 (1975), without precedent or substantial explication, has created broad affirmative duties for municipalities in connection with their delegated powers of zoning and planning. Without a hint of support or substantiation in the New Jersey zoning and planning enabling legislation, *N.J.S.A.* 40:55-1 *et seq.*, the highest court of this State has, in effect, amended the existing legislation so as to mandate express duties and requirements of communities as to certain segments of the population. The impact of this determination is already being felt throughout the State, with hundreds of municipalities faced with uncertainty as to their respective obligations and with the lower courts obviously struggling with their forced intervention into traditionally legislative areas.

In the final analysis, the decision below is grounded upon a common fallacy of recent years—the equating of zoning with housing—thus, labelling zoning as the scapegoat for a panoply of social ills. Stripped to its essentials, the *Mount Laurel* determination, without even supportive suggestion in the constitutional and statutory provisions statedly relied upon, declares a statewide "housing crisis" of such magnitude as to reverse all precedent of judicial reluctance to intrude upon local legislative discretion. All communities falling under the *Mount Laurel* umbrella have presumptive duties to "provide" for a "fair share" of low and moderate income housing. Elemental definitions such as "low and moderate income persons," "developing community," "region" and "fair share" are left vague. Moreover, in stark contravention

of traditional law, the municipality is saddled with a weighty burden of proof to demonstrate its compliance with the *Mount Laurel* mandate.

Equally significantly, the *Mount Laurel* decision, although bottomed only on the facts adduced as to Mount Laurel, purportedly applies to all or most of the municipalities in the State of New Jersey, and will surely be of major significance to the courts of other jurisdictions, both state and federal. Thus, despite the limited factual pattern presented, the New Jersey Supreme Court has, in effect, recast the legislative provisions applicable throughout the state.

In this context, the appeal of Mount Laurel, addressed to this Court, raises substantial legal questions and considerations as to the appropriate role of the judiciary in a traditionally legislative domain.

REASONS FOR THE EXERCISE OF JURISDICTION

Recognizing the reluctance of this Court to pass upon issues addressed principally to questions of local state law, the Township of Holmdel nonetheless urges that the scope and import of the decision of the New Jersey Supreme Court below raises concerns appropriately and urgently addressed to this Court. The Township of Holmdel respectfully submits herein that the *Mount Laurel* decision involves matters far transcending the municipal borders of Mount Laurel and, indeed, beyond the boundaries of New Jersey itself. Equally, the nature of the disposition below is in conflict with the fundamental tenets of governmental structure in this nation, delineating the proper and distinct roles of the legislature and the judiciary. Finally, the breadth and imprecision of the determination below, in effect, prejudges other cases not before the court and, at the same time, casts upon the included communities a duty which, in practical effect, cannot be met. The Township of Holmdel further adopts the views and expressions of the appellant heretofore filed by way of jurisdictional statement.

A. The Issues Raised on Appeal by Mount Laurel are of Paramount Statewide and National Significance.

Historically, issues of zoning and planning were solely matters of local government law, and even the state courts were deferential to the discretionary determinations of municipalities in the exercise of powers delegated by the states. However, in recent years, the courts have gradually shed their traditional role and, flexing "activist" muscles, have increasingly intruded upon the local legislative process, such there appears to evolving a national

law of zoning, eroding earlier parochialism. Indeed, the federal courts also have been increasingly called upon to address zoning issues, which, in prior days were left entirely to the state courts. See, *e.g.*, *Warth v. Seldin*, — U.S. — (43 U.S.L.W. 4906, June 25, 1975); *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974); *Construction Industry Association of Sonoma County v. City of Petaluma*, — F.2d — (9th Cir. August 13, 1975); *Ybarra v. City of Town of Los Altos Hills*, 503 F.2d 250 (9th Cir. 1974); *Steel Hill Development, Inc., v. Town of Sanborton*, 469 F.2d 956 (1st Cir. 1972).

The common thread running through the more recent decisions is the apparent assumption that the courts are capable of dealing with, and are properly empowered to deal with, the broad spectrum of social problems and concerns involving the provision of housing for the nation's disadvantaged. The obvious impracticalities and legal impediments to this assumption are dealt with by oversimplifying the issues, so as to cast the local exercise of the zoning power as the "cause" of the problem—which, in fact, is far more complex of resolution and, at best, only indirectly and tangentially related to zoning. Thus, it is further assumed, the courts, by tinkering with existing zoning provisions, will address and alleviate the housing problem.

This judicial role, it is respectfully submitted, is both simplistic and engages the courts in problems and issues with which they can neither effectively nor properly deal—a role traditionally eschewed by the federal courts and the courts of New Jersey. See *San Antonio Independent School District, v. Rodriguez*, 411 U.S. 1, 32 (1973), *rehearing den.* 411 U.S. 959 (1973); *Lindsey v. Normet*, 405 U.S. 56, 74 (1972) *cf. Robinson v. Cahill*, 62 N.J. 473, 492, 303 A.2d 273, 290 (1973), *cert. den.* 414 U.S. 976 (1974)

(". . . the equal protection clause may be unmanageable if it is called upon to supply categorical answers in the vast area of human needs, choosing those which must be met and a single basis upon which a State must act."); *Borough of Leonia v. Borough of Fort Lee*, 56 N.J. Super. 135, 144, 151 A.2d 540, 545 (App. Div. 1959) ("The court can only determine whether the ordinance is valid or invalid, and may not determine in behalf of the governing body what the zoning pattern should be."); *Gartland v. Borough of Maywood*, 45 N.J. Super. 1, 5, 131 A.2d 529, 531 (App. Div. 1957) ("The devising of a zoning amendment is not judicial business; we are not asked to sit in with the governing body. Nor are we entrusted with a broad superintendency over the matter."); *Cervase v. Kawaida Towers, Inc.*, 124 N.J. Super. 547, 569, 308 A.2d 47 (Law & Ch. Div. 1973), *aff'd* 129 N.J. Super. 124, 322 A.2d 477 (App. Div. 1974) ("In short, the social or economic belief of a court cannot be substituted for the judgment of officials who are either elected or appointed to exercise that judgment.").

Accordingly, it is respectfully submitted, it is imperative for this Court to hear the within appeal in order to settle the appropriate role of the courts, both state and federal, in such matters.

B. The Disposition in this Cause, by the Supreme Court of New Jersey, Represents a Manifestly Improper Intrusion Upon the Legislative Prerogatives, in Violation of the Constitutional Direction for the Separation of Powers.

The *Mount Laurel* decision here on appeal constitutes a broad amendment to the zoning enabling legislation of New Jersey, imposing express and unprecedented affirmative duties upon municipal governments. The high court of

New Jersey has, in bootstrap fashion, expansively invoked a generalized reference to a goal of the promotion of the "general welfare," and has thereby created broad municipal obligations, without the slightest hint of such legislative intention. It is interesting to note that the New Jersey Supreme Court, in adjudicating the importance of adequate shelter, relies heavily on related local legislation; yet, upon reflection, the court then impliedly finds the existing enactments wanting, and embarks on its own course of legislative drafting.

It must be stressed that the issues on appeal do not merely concern the judicial construction of local statutory provisions by the state courts; the true issues involve the extent to which the judiciary may invade the legislative process and usurp the legislative power. The issue of *Mount Laurel* is not simply the review, from a constitutional standpoint, of a particular manner of zoning provision, see, for instance, *Buchanan v. Warley*, 245 U.S. 560 (1917), nor the articulation of some definable limit on the police power as delegated to the local governments. In sharp contrast, the issue of *Mount Laurel* is whether, and to what extent, the courts are empowered to invent and create "social legislation," however well-intended, in response to the mere bare assertion of the infringement of some purported constitutional right. See *Confederacion de la Raza Unida v. City of Morgan*, 324 F. Supp. 895 (N.D. Calif. 1971); *Commonwealth of Pennsylvania v. County of Bucks*, 8 Pa. Cmwlth. 295, 302 A.2d 897 (Com. Ct. 1973), *cert. den.* 414 U.S. 1130 (1974).

It is well established that it is for the legislature, not the judiciary, to serve as the guardian of the common good by way of social enactments, and that the role of the courts in exercising that power for a public purpose is extremely restricted. See *Berman v. Parker*, 348 U.S. 26,

32-33 (1954); *Steel Hill Development, Inc. v. Town of Sanborton*, above, at 960. Most recently, the Ninth Circuit Court of Appeals has articulated the limited judicial role:

> "If the present system of delegated zoning power does not effectively serve the state interest in furthering the general welfare of the region or entire state, it is the state legislature's and not the federal courts' role to intervene and adjust the system .... the federal court is not a super zoning board and should not be called on to mark the point at which legitimate local interests in promoting the welfare of the community are outweighed by legitimate regional interests." *Construction Industry Association of Sonoma County v. City of Petaluma*, above (slip opinion at p. 15).
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> ". . . . To be sure, housing needs in Metropolitan areas like the San Francisco Bay Area are pressing and the needs are not being met by present methods of supplying housing. However, the federal court is not the proper forum for resolving these problems. The controversy stirred up by the present litigation, as indicated by the number and variety of amici on each side, and the complex economic, political and social factors involved in this case are compelling evidence that resolution of the important housing and environmental issues raised here is exclusively the domain of the legislature." *Construction Industry Association of Sonoma County v. City of Petaluma*, above (slip opinion at p. 16, fn. 17).

The decision in *Mount Laurel* rides roughshod over the barrier between the legislative and judicial branches of government. In sum, the *Mount Laurel* determination, however philosophically appealing, constitutes no less than the enactment of zoning legislation by the judiciary.

Even assuming the existence in New Jersey of a "housing crisis," it is not for the courts, in reliance upon amorphous constitutional provisions, to mold broad, and essentially legislative, prescriptions. Such is the traditional, and constitutionally safeguarded, function of the legislature—the voice of the people.

CONCLUSION

The disposition below constitutes a major intrusion into local legislative process and, most pointedly, into the domain of the legislative prerogatives of the State of New Jersey. The decision further thrusts the courts into unprecedented and impracticable regulation of municipal affairs. The issues raised in this appeal are of vital public importance to the entire citizenry of the State of New Jersey and, indeed, to the nation at large, and the Township of Holmdel, therefore, respectfully submits that the appeal be heard and decided by this Court.

Respectfully submitted,

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